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COURT OF APPEAL - FOURTH APPELLATE DISTRICT
DIVISION ONE

STATE OF CALIFORNIA

DANIEL R. et al, Petitioners, v. THE SUPERIOR COURT OF SAN DIEGO COUNTY, Respondent;	D050500 (San Diego County Super. Ct. No. 0514372C)
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY, Real Party in Interest.	

Proceedings for extraordinary relief after reference to a Welfare and Institutions Code section 366.26 hearing. Martin W. Staven, Judge. (Retired Judge of the Tulare Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)

Petitions denied.

Daniel R. and Alicia R. seek review of juvenile court orders denying reunification services regarding their daughter, Alicia R. (the minor), and setting a hearing under

Welfare and Institutions Code section 366.26.[1] Both parents contest the minor's placement with maternal cousins (the cousins) in Eureka, California. Daniel argues the court erred in denying him reunification services.[2] We deny the petitions.

FACTUAL AND PROCEDURAL BACKGROUND

On December 30, 2006, police responded to a burglary call and found Alicia and the minor in a ransacked apartment. Alicia was under the influence of methamphetamine. Police arrested Alicia and took the minor into protective custody. On January 4, 2007, the San Diego County Health and Human Services Agency (the Agency) petitioned on behalf of the two-year-old minor under section 300, subdivision (b), alleging she was at substantial risk because of Alicia's drug use. Alicia and Daniel had lost custody of their two sons, George R. and Raul R., because of their drug involvement and criminal life style. They did not reunify with these children and parental rights were terminated on June 9, 2003. Alicia's oldest two children, Carlos W. and Enrique F., were removed from her custody and were living with their paternal grandparents.

At the time of the minor's detention, Daniel was in residential treatment. He had a 35-year history of drug use and a criminal record that dated to 1975. On February 12,

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1 All statutory references are to the Welfare and Institutions Code.

2 Without leave of this court, Alicia provided a late supplemental letter brief in which she presented additional arguments. We have considered the arguments in this brief and find them to be without merit.

2007, he was arrested for attempted murder and possession of methamphetamine and had a positive test for methamphetamine.

The Agency considered placing Alicia with various relatives. A paternal aunt stated that she wanted to be considered for placement. However, her home was being renovated and she currently did not have a place for the minor. The maternal grandparents did not qualify for placement because of the grandfather's criminal history. The cousins said they wanted to adopt the minor. They had no children of their own, but participated in a parenting class to prepare themselves to care for the minor and traveled to San Diego to visit her. Alicia's other suggestion for the minor's placement led to a disconnected telephone number and inaccurate address. The parents said if they could not reunify with the minor, they wanted her to be placed with relatives. But Alicia did not want her to go to Eureka because she would not be able to visit her there. She later claimed the cousins grew marijuana on their property. In March she suggested the minor be placed with her friend, Alice K.

At the jurisdictional and dispositional hearing on March 8, 2007, the social worker testified there had been no change in the parents' drug use and criminal activity since George's and Raul's dependencies in 2002 and 2003. She said she had considered Alice K. for placement, but Alice K. was a non-related extended family member and had never met the minor. Alice K. testified she lived in Riverside County and was going through the process of becoming a foster parent. Alicia testified she did not want the minor placed with the cousins because she did not know them, and they had no experience with children and grew marijuana.

The court found the allegations of the petition to be true, declared the minor a dependent child and placed her in relative care. It denied services to both parents under section 361.5, subdivisions (b)(10) and (b)(13) and to Daniel under section 361.5, subdivision (e)(1) and set a section 366.26 hearing.

Daniel and Alicia petition for review of the court's orders. (§ 366.26, subd. (*l*); Cal. Rules of Court, rule 8.425.) This court issued an order to show cause, the Agency responded and the parties waived oral argument.

DISCUSSION

I

Alicia and Daniel contend the court erred by placing the minor in relative care. They argue they want her to live closer to them so they can visit more easily and have the opportunity to reunify.

Section 361, subdivisions (a) and (d) requires that relatives who have requested placement of a dependent child be given preferential consideration at disposition. "'[P]referential consideration shall be given to a request by a relative of the child for placement of the child with the relative. . . .[¶] "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.'" (*In re Andrea G.* (1990) 221 Cal.App.3d 547, 556.) In making a decision on a child's placement, the court must consider that child's best interests. (§ 361.3, subd. (a)(1).) "The statute acknowledges [] that the court is not to presume that a child should be placed with a relative, but is to determine whether such a placement is *appropriate*, taking into account the suitability of the relatives home and the best interests of the

child." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 321.) When a court has made a decision such as a dependent child's placement, "'a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations].'" (*In re Stephanie M, supra,* 7 Cal.4th at p. 318.)

The parents did not show an abuse of the court's discretion. The social worker considered the grandparents, a paternal aunt, the cousins and Alice K. before determining placement with the cousins was in the minor's best interest. The cousins traveled to San Diego from Eureka to visit the minor and visited her every day of their four-day trip. They showed a true interest in her and wanted to adopt her. They had received a positive home evaluation and the social worker testified she had no reason to doubt the thoroughness and credibility of the evaluation. Alice K. is not a relative and had never met the minor. The minor's placement with the cousins was well within the court's discretion.

II

Daniel asserts the court erred by denying him reunification services under section 361.5, subdivisions (b)(10), (b)(13) and (e)(1).

An order denying services is reviewed for substantial evidence. (*In re James C.* (2002) 104 Cal.App.4th 470, 484.) "[W]e must indulge in all reasonable inferences to support the findings of the juvenile court [citation], and we must also '. . . view the record in the light most favorable to the orders of the juvenile court.'" (*In re Luwanna S.* (1973) 31 Cal.App.3d 112, 114.) The appellant bears the burden to show the evidence is

insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

The Agency concedes the court erred in denying services under section 361.5, subdivision (e)(1) because, although Daniel was in custody at the time of the hearing, he had not been convicted and the length of his incarceration was unknown. However, substantial evidence supports denying services under section 361.5, subdivisions (b)(10) and (b)(13).

Section 361.5, subdivision (b)(10) provides reunification services need not be provided when the court finds by clear and convincing evidence:

> "That the court ordered termination of reunification services for any siblings or half-siblings of the child because the parent or guardian failed to reunify with the sibling or half-sibling after the sibling or half-sibling had been removed from that parent or guardian pursuant to Section 361 and that parent or guardian is the same parent or guardian described in subdivision (a) and that, according to the findings of the court, this parent or guardian has not subsequently made a reasonable effort to treat the problems that led to removal of the sibling or half-sibling of that child from that parent or guardian."

Section 361.5, subdivision (b)(13) provides services need not be provided when the court finds by clear and convincing evidence:

> "That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by section 358.1 on a least two prior occasions, even though the programs identified were available and accessible."

The parents' children, George and Raul, became dependents because of the parents' drug abuse. Alicia and Daniel were offered reunification services in George's case, but they did not comply with their case plans and the court terminated their parental rights to both children on June 9, 2003. Daniel admitted he had a positive test for methamphetamine in November 2006. He continued to use drugs after the petition was filed in January 2007, was arrested for being under the influence in February and tested positive for methamphetamine and marijuana. His continued drug use showed his resistance to treatment. Although he had been in a residential treatment program, he was again in custody at the time of the hearing in March. Substantial evidence supported denying services under section 361.5, subdivision (b)(10) and (b)(13).

DISPOSITION

The petitions are denied.

McCONNELL, P. J.

WE CONCUR:

NARES, J.

IRION, J.